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Report of the International Court of Justice

Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice

Report of the Secretary-General

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I. Introduction

1. The present report is submitted pursuant to paragraph 15 of the Terms of Reference, Guidelines and Rules of the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice (A/47/444, annex),[1] issued at the time of the establishment of the Fund (hereinafter referred to as "the Terms of Reference"), and is subsequent to the report submitted to the General Assembly at its fifty-eighth session under the agenda item entitled "Report of the International Court of Justice" (A/58/295).

II. Mandate

2. The Trust Fund was established in 1989 under the Financial Regulations and Rules of the United Nations following consultations with the President of the International Court of Justice (ICJ). In accordance with the Terms of Reference of the Fund, financial assistance is to be provided to States for expenses incurred in connection with (a) a dispute submitted to the Court by way of a special agreement or (b) the execution of a judgment of the Court resulting from such special agreement.

III. Beneficiaries

3. The Fund is open to all States parties to the Statute of the Court and to non-member States having complied with the conditions stipulated in Security Council resolution 9 (1946) of 15 October 1946.

4. During the period under review (1 July 2003 to 30 June 2004), the Fund received one joint application from Benin and the Niger to defray the expenses incurred in connection with the submission of their boundary dispute to the Court.

5. On the recommendation of the Panel of Experts set up in accordance with paragraph 9 of the Terms of Reference of the Fund, I decided, on 24 May 2004, to award financial assistance in the amount of US$ 350,000 to each applicant, the purpose of which was to defray the following expenses: costs of agents, counsel, experts or witnesses, staff costs, costs of reproduction of maps and production of technical documents, expenses incurred in connection with the memorial, counter-memorial and replies, costs of legal research, and costs incurred in connection with oral proceedings and the demarcation of the frontier between Benin and the Niger.

6. It should be noted that the recommendation of the Panel of Experts and my decision to award financial assistance were made bearing in mind that the Fund has limited assets. They were also governed by the need to accommodate potential applications that may be made in the near future.

IV. Contributions

7. Voluntary contributions to the Fund may be made by States, intergovernmental organizations, national institutions and non-governmental organizations, as well as natural and juridical persons.

8. During the period under review, three States contributed to the Fund, as follows:

State	*Amount (United States dollars)*	*Financial year*
Finland	12 056.00	2003
Norway	12 584.00	2003
Mexico	10 000.00	2004
Norway	25.00	2004
Total	**34 665.00**	

9. As at 30 June 2004, the total balance of the Fund was US$ 1,936,583. This amount excludes awards that have already been paid.

V. Needs assessment

10. The Charter of the United Nations recognizes the settlement of international disputes "by peaceful means, and in conformity with the principles of justice and international law" as one of the basic purposes of the United Nations and as an essential tool for the maintenance of international peace and security. ICJ is the principal judicial organ of the Organization. As noted above, the Fund was created with a view to facilitating a decision by parties to a dispute to seek judicial settlement of their dispute through the Court. As noted in my previous reports, despite numerous appeals, the Fund has had a decreasing level of resources since its inception. While I am grateful to those Member States which contributed during the period under review, I note that the number of contributions remains low. Thus, I strongly urge all States and other relevant entities to give serious consideration to making contributions to the Fund, not only in a substantial manner but also on a regular basis.

VI. Revision of the Terms of Reference of the Fund

11. As indicated in my previous report, with a view to encouraging States to apply for grants from the Fund, a review of the existing procedures governing the use of the Fund has been conducted by the Office of Legal Affairs, in consultation with the Registry of the Court and the Controller.

12. As a result of this review, the Terms of Reference of the Fund were revised. The purpose of the amendments introduced is twofold.

13. They first aim at expanding the eligibility rules set forth in paragraph 6 of the Terms of Reference, under which, to the present date, applications for financial assistance may be submitted by States which lack the necessary financial resources in connection with either a dispute submitted to the Court by way of a special agreement or in connection with the execution of a judgment.

14. Under paragraph 6 of the revised Terms of Reference, applications may now also be submitted in connection with (a) cases referred to the Court by one party

pursuant to a jurisdictional clause in a treaty or convention in force, or matters where the jurisdiction of the Court is "specially provided for in the Charter of the United Nations" (ICJ Statute, Article 36, para. 1) and (b) cases brought to the Court pursuant to its optional jurisdictional clause (ICJ Statute, Article 36, para. 2), provided such cases have reached the merits stage of the proceedings, either after preliminary objections to jurisdiction or admissibility have been either rejected by the Court or withdrawn by the party or parties concerned, or when no such objections have been raised and the applicant has undertaken not to file any.

15. Furthermore, under paragraphs 13 and 14 of the revised Terms of Reference, applicant States may seek to obtain, once an award is granted, an advance not to exceed 50 per cent of the amount of the awarded financial assistance to cover actual approved expenditures.

16. The revised Terms of Reference, the text of which is contained in the annex to the present report, will take effect from the date of issuance of the report. It is my sincere hope that the above-mentioned amendments will assist in fully meeting the needs of all States wishing to call upon the Court to settle their disputes peacefully, and encourage them to do so, thus fulfilling the objectives that motivated the establishment of the Fund in 1989.

VII. How to contribute?

17. Voluntary contributions to the Fund can be made by bank transfer or by cheque to the order of the United Nations. Cheques should be sent to:

Cashier's Office
United Nations
New York, NY 10017
United States of America

The cheque should indicate that it is for the "ICJ Trust Fund", account code TJA.

18. For any additional information, please contact the Office of the Legal Counsel, Office of Legal Affairs. Telephone: + 1 212 963 5350; fax: + 1 212 963 6430.

Notes

[1] Available also on the web site that provides access to information relevant to the Fund: http://www.un.org/law.trustfund/trustfund.htm.

Annex

Revised Terms of Reference, Guidelines and Rules of the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice

Reasons for establishing the Trust Fund

1. The United Nations has a special role in the maintenance of peace and security. The Charter of the United Nations recognizes settlement of international disputes "by peaceful means, and in conformity with the principles of justice and international law" as a basic purpose of the United Nations and as an essential tool for the maintenance of international peace and security. The importance of peaceful settlement of disputes has been reiterated in numerous legal instruments of the United Nations, including the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations[a] of 24 October 1970 and the Manila Declaration on the Peaceful Settlement of International Disputes[b] of 15 November 1982. In the Manila Declaration, the General Assembly stressed once again that States should be encouraged to settle disputes by making full use of the provisions of the Charter of the United Nations, in particular those concerning the peaceful settlement of disputes. The Assembly also stated that recourse to judicial settlement of legal disputes, particularly referral to the International Court of Justice, should not be considered an unfriendly act between States.

2. The Court is the principal judicial organ of the United Nations. Its judgments represent the most authoritative pronouncement on international law. As follows from Article 36, paragraph 3, of the Charter, the Court is also the principal organ for resolving legal disputes between States. The Secretary-General, as the Chief Administrative Officer of the Organization, has, therefore, a special responsibility to promote judicial settlement through the Court.

3. Legal disputes may arise in various parts of the world over a wide variety of issues. There are occasions where the parties concerned are prepared to seek settlement of their disputes through the International Court of Justice, but cannot proceed because of the lack of legal expertise or funds. There may also be cases where the parties are unable to implement a decision of the Court for the same reasons. In all such cases, the availability of funds would advance the peaceful settlement of disputes.

4. The cost which may be incurred by proceedings of the International Court of Justice is a factor which may in some instances discourage States from resorting to it. In arbitration, the parties bear the costs of the arbitrators and the maintenance of the tribunal (e.g., the registry etc.). The administrative costs of the Court are borne by the United Nations. However, as in arbitration, the parties must remunerate their counsel, reimburse, where applicable, the costs of their agents, experts and witnesses and bear the expense of the preparation of memorials and counter-memorials. The total costs may be considerable. Thus, cost considerations may be a factor in the decision whether or not to refer a dispute to the Court. The availability of funds would therefore be helpful for States which lack the necessary funds.

5. The United Nations has extensive experience in raising and managing voluntary contributions for purposes of providing assistance to countries for their industrial and economic development. This experience could be utilized in raising and managing financial resources which would be used to assist States in obtaining the necessary legal and other expertise to facilitate resolution of their disputes by peaceful means through the International Court of Justice.

Object and purpose of the Trust Fund

6. The Trust Fund (hereinafter referred to as "the Fund") is established by the Secretary-General under the Financial Regulations and Rules of the United Nations in accordance with the terms and conditions specified in the present Terms of Reference, Guidelines and Rules (hereinafter referred to as "the Terms of Reference"). The purpose of the Fund is to provide financial assistance to States for expenses incurred in connection with:

(a) A dispute submitted to the International Court of Justice under Article 40, paragraph 1, of its Statute:

(i) By way of a special agreement on the basis of Article 36, paragraph 1, of the Statute;

(ii) By way of an application on the basis of Article 36, paragraphs 1 and 2, of the Statute provided that:

(a) In a case in which preliminary objections have been filed by one or both parties to the case under Article 79 of the Rules of the Court, such objections have been either rejected by the Court or definitively withdrawn by the party or parties concerned;

(b) In a case in which no preliminary objections have been filed, the State requesting financial assistance gives the Secretary-General an undertaking not to present any preliminary objection under Article 79 of the Rules of the Court and to plead the case on the merits; such an undertaking shall be duly notified to the Court by the Secretary-General;

(b) The execution of a Judgment of the International Court of Justice.

Contributions to the Fund

7. The Secretary-General shall invite States, intergovernmental organizations, national institutions and non-governmental organizations, as well as natural and juridical persons, to make voluntary financial contributions to the Fund.

Application for financial assistance

8. Subject to the requirements of paragraph 6 of the Terms of Reference, an application for financial assistance from the Fund may be submitted by any Member State of the United Nations, any other State party to the Statute of the International Court of Justice or any State not party to the Statute of the Court having complied

with Article 35, paragraph 2, of the Statute (hereinafter referred to as "the requesting State"). The application shall be accompanied by:

(a) If financial assistance is sought under paragraph 6 (a) (i) of the Terms of Reference, a copy of the special agreement;

(b) If financial assistance is sought under paragraph 6 (a) (ii) (a.) of the Terms of Reference, a copy of the judgment of the Court rejecting preliminary objections in the case, and/or a copy of a document confirming the withdrawal of preliminary objections, as appropriate;

(c) If financial assistance is sought under paragraph 6 (a) (ii) (b.) of the Terms of Reference, the undertaking referred to in that paragraph;

(d) An itemized statement of the estimated costs for which financial assistance is requested from the Fund;

(e) An undertaking that the requesting State shall:

(i) Supply a final statement of account providing details of the expenditures made from the approved amounts, to be certified by an auditor acceptable to the United Nations;

(ii) Refund, where applicable, any unused advance which may have been made to it;

(f) An indication by the requesting State of the amount of the advance it wishes to receive under the provisions of paragraph 13 of the Terms of Reference.

Establishment of a Panel of Experts

9. Once the request for financial assistance is determined to be admissible, the Secretary-General shall establish a Panel of Experts composed of three persons of the highest judicial and moral standing. The task of the Panel shall be to examine the application in order to recommend to the Secretary-General the amount of the financial assistance to be awarded, the amount of the advance to be allocated under the provisions of paragraph 13 of the Terms of Reference and the types of expenses to be covered by the assistance: preparation of memorials, counter-memorials and replies; fees for counsel and payment, where applicable, of the expenses of agents, experts or witnesses; legal research fees; costs related to oral proceedings (e.g., interpretation in the case of languages other than English and French); expenses of producing technical materials (e.g., reproduction of cartographic evidence) and costs relating to the execution of a judgment of the Court (e.g., demarcation of boundaries).

10. The deliberations of the Panel of Experts shall be conducted in strict confidentiality.

11. In considering an application, the Panel of Experts shall be guided solely by the financial needs of the requesting State and the availability of funds.

12. Travel expenses and subsistence allowance are payable to members of the Panel of Experts from the Fund.

Granting of assistance

13. On the basis of the evaluation and recommendations of the Panel of Experts, the Secretary-General shall make a final determination regarding the financial assistance to be awarded from the Fund and the amount of the advance to be allocated. The latter is not to exceed 50 per cent of the awarded financial assistance. Payments of the advance and of the final payment of the awarded financial assistance shall be made by means of a wire transfer from the Secretary-General's Trust Fund. The final payment shall be made against receipts evidencing actual expenditures for the total amount of the approved costs.

14. The requesting State shall not be eligible to receive the final portion of the award, and shall be liable for the reimbursement of the advance, if the final payment of the award is not claimed:

(a) Within two years from the date of the judgment, in cases referred to in paragraph 6 (a) above; or

(b) Within a reasonable period of time from the date of the judgment which should, under no circumstances, exceed five years, in the case referred to in paragraph 6 (b) above.

Application of the Financial Regulations and Rules of the United Nations

15. The Financial Regulations and Rules of the United Nations shall apply to the administration of the Trust Fund. The Fund shall be subject to the auditing procedures provided therein.

Reporting

16. An annual report on the activities of the Fund shall be made to the General Assembly.

Implementing office

17. The Office of Legal Affairs shall be the implementing office for the Trust Fund and shall provide the services required for the operation of the Fund.

Revision

18. The Secretary-General shall revise the above provisions if circumstances so require.

Notes

[a] General Assembly resolution 2625 (XXV), annex.

[b] General Assembly resolution 37/10, annex.